



Department of  
**Justice**

[www.dojni.gov.uk](http://www.dojni.gov.uk)

**GUIDANCE FOR THE OPERATION OF THE  
CRIMINAL RECORDS FILTERING REVIEW  
SCHEME**

**March 2016**

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## **1. Introduction**

1.1 This guidance provides information on the operation of the independent review mechanism in relation to information disclosed on the standard and enhanced criminal record certificates issued by AccessNI, Northern Ireland's Criminal History Disclosure Service, after the filtering process has been applied. The guidance has been developed by the Department of Justice (DOJ/the Department), under the provisions of section 117B and Schedule 8A of the Police Act 1997 (the 1997 Act), as inserted by Schedule 4 of the Justice Act (Northern Ireland) 2015 (the Justice Act). The provisions of Schedule 8A are set out in Annex A.

1.2 Certain convictions or disposals are filtered off criminal record certificates by AccessNI. This is provided for by section 113A (6) of the 1997 Act. The review mechanism enables an individual, in certain circumstances, to seek a review of their case where a conviction or disposal has not been filtered from their standard or enhanced criminal record certificate. The Act creates a position of independent reviewer; paragraph 3 of Schedule 8A of the 1997 Act, provides that the independent reviewer must have regard to this guidance in exercising his or her functions under the Schedule.

1.3 The review mechanism will commence on 1 March 2016. The guidance will be kept under review and updated as necessary to reflect any learning from the implementation process.

## **2. Background**

2.1 The DOJ has a statutory duty under sections 113A, 113B, 114 and 116 of Part 5 of the 1997 Act to provide standard and enhanced criminal record certificates on application. This function is undertaken by AccessNI. These certificates are mainly, but not exclusively, used by employers and voluntary organisations to assess the suitability of individuals to work or volunteer for positions with children and/or adults in situations where the children and/or adults could be regarded as vulnerable. Enhanced Disclosure certificates form an important part of the Northern Ireland Executive's framework for the protection of children and such adults. Further

information on AccessNI, the basic, standard and enhanced checks it carries out, and what is involved in a check can be found at Annex B.

2.2 In developing its approach to criminal records disclosure, the Department is mindful of the importance of giving consideration to international children and human rights standards, in particular the European Convention on Human Rights (ECHR), as incorporated into domestic law by the Human Rights Act 1998, and the United Nations Convention on the Rights of the Child (UNCRC). In 2011, Sunita Mason (the independent Government Advisor on the management of criminality information for England and Wales), examined the Department's approach to criminal record disclosure in detail. This included looking at the balance between the necessary levels of public protection and personal freedoms, and how employers can be helped, through access to criminality information, to take informed decisions on an applicant's suitability to take on certain roles. Mrs Mason made a number of recommendations<sup>1</sup> aimed at improving the arrangements in Northern Ireland.

2.3 These recommendations, and a number of court decisions in recent years, have highlighted the human rights issues that must be considered in developing a proportionate system of disclosure. The Department has also received representations from key stakeholders on proportionality. These have helped to inform improvements to the arrangements for the disclosure of the criminal record checks carried out by AccessNI.

## **The Filtering Scheme**

2.4 The improvements include the introduction of a statutory filtering scheme for criminal record disclosures in Northern Ireland, which came into effect on 14 April 2014 through amendments to the 1997 Act.<sup>2</sup> The provisions of the legislation in relation to filtering are similar to those in England and Wales. They allow for the

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<sup>1</sup> A Managed Approach – A Review of the Criminal Records Regime in Northern Ireland, Part 1, 2011 See: [http://www.dojni.gov.uk/index/public-consultations/current-consultations/a-managed-approach-report\\_sunita\\_mason.pdf](http://www.dojni.gov.uk/index/public-consultations/current-consultations/a-managed-approach-report_sunita_mason.pdf)

<sup>2</sup> The Police Act 1997 was amended by two statutory rules, available at these links: [http://www.legislation.gov.uk/nisr/2014/100/pdfs/nisr\\_20140100\\_en.pdf](http://www.legislation.gov.uk/nisr/2014/100/pdfs/nisr_20140100_en.pdf); and [http://www.legislation.gov.uk/nisr/2014/207/pdfs/nisr\\_20140207\\_en.pdf](http://www.legislation.gov.uk/nisr/2014/207/pdfs/nisr_20140207_en.pdf)

The press release announcing the legislative amendments made is available here:

<http://www.dojni.gov.uk/index/media-centre/ford-introduces-filtering-scheme-for-accessni-checks.htm>

exclusion of certain convictions which are both old and minor, and of other non-conviction disposals (such as cautions and informed warnings) from disclosure on standard and enhanced criminal record certificates. The scheme incorporates a graduated approach for younger people, with significantly shorter time frames applying to the disclosure of information relating to those aged under 18 at the time of their conviction, or the award of their disposal.

2.5 An outline of the main provisions of the Filtering Scheme is set out at Annex C. In broad terms, the amendments to the Police Act 1997 specify, as a safeguarding measure, certain offences which are always disclosed. These are referred to as specified offences, and are listed under sections 113A (6D) and 113B of the 1997 Act<sup>3</sup>. Otherwise, convictions (provided that either there is not more than one, and/or that a custodial sentence was not received) are filtered from standard and enhanced criminal record certificates after eleven years for those who were adults at the time of the conviction; and after five and a half years for those who were aged under 18 (and who have not further offended). Adult cautions (except for specified offences) are filtered after six years (after two for those aged under 18); diversionary youth conferences after two years; and informed warnings after one (for both adults and those aged under 18).

2.6 The 1997 Act has been further amended by the Justice Act (NI) 2015 to include additional measures designed to modernise and improve the arrangements for the disclosure of the criminal record checks carried out by AccessNI. These new provisions include the introduction of a review mechanism, as part of the filtering scheme, so that an individual, in certain circumstances, may seek a review of his or her case where a conviction or other disposal has not been filtered from their standard or enhanced criminal record certificate. **This document provides guidance on the operation of the review mechanism.** The mechanism is enacted to recognise that the filtering scheme is, of necessity, a broad brush approach, and that a review will enable closer scrutiny in some cases.

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<sup>3</sup> See links at footnote 2

### **3. The Independent Reviewer**

3.1 The legislation provides that the review process should be carried out by an independent person, appointed by the Department of Justice. See section 117B and Schedule 8A of the Police Act 1997 (the 1997 Act), as amended. In carrying out his or her functions, the Independent Reviewer (IR) must have regard to this guidance.

#### **Terms and conditions**

3.2 Paragraph 2 of Schedule 8A of the 1997 Act, as amended, sets out the terms and conditions of the IR's appointment. In summary, the IR will be appointed by the Department, for a period not exceeding 3 years, to consider any request for a review. The Department will provide administrative or other assistance to the IR in carrying out his or her role. However, all decisions about whether or not information should be disclosed will rest with the Independent Reviewer, and he/she will report to the Department each year about the exercise of his or her functions. The IR may make recommendations to the Department regarding this guidance, or any guidance which he/she thinks it would be appropriate for the Department to issue, as well as in relation to any changes to any statutory provision which he/she thinks may be appropriate.

#### **Relationship with the Independent Monitor**

3.3 Under Schedule 8A of the 1997 Act, the IR may also hold office as the Independent Monitor (IM). This provision is designed to help streamline the arrangements and make sure that the review process can be undertaken without undue delay. It would also help to ensure a consistent approach to the disclosure of information. However, should the two roles be undertaken separately, the IR would liaise closely with the IM to ensure a consistency of approach.

3.4 The IM is appointed under the 1997 Act to review a sample of the enhanced criminal record certificates issued by the Disclosure and Barring Service (DBS) for quality assurance purposes. He/she also carries out this function in relation to certificates issued by AccessNI in Northern Ireland. Under the Protection of Freedoms Act 2012 the IM's functions were extended in England and Wales to enable an individual to apply to the IM to determine whether any information

provided by the police under section 113B(4) of the 1997 Act is relevant and/or ought to be included in an enhanced criminal record certificate. Section 117A of the 1997 Act has now been amended by section 40(5) of the Justice Act (see Annex D) to permit individuals in Northern Ireland to apply to the IM about such information.

## **4. The review mechanism – scope and eligibility**

### **Scope of the review**

4.1 The over-riding purpose of criminal record disclosure is to provide a proportionate, efficient scheme which balances the need to safeguard the public with ensuring that disclosure is relevant to the purpose for which it is sought and respects the rights of the applicant. Information will not be disclosed where the independent reviewer is satisfied that disclosure would be disproportionate and he/she is satisfied that the non-disclosure of information would not undermine the safeguarding or protection of children and vulnerable adults, or pose a risk of harm to the public.

### **Eligibility**

4.2 Two fundamental principles govern the operation of the review mechanism. They are that:

- i. A conviction which would never be spent would not be eligible for review. Spent convictions are those that do not normally have to be disclosed because a required period of time has passed and an individual has no new or related offences. The time periods are set out in the Rehabilitation of Offenders (NI) Order 1978 (the 1978 Order) and summarised in the table attached at Annex E).
- ii. The earliest that a conviction will be reviewed will be after the period set out in the 1978 Order has passed.

These principles are necessary as convictions which are never spent are included on a basic certificate; and other convictions appear on such certificates until they become spent. It would not, therefore, be sensible or appropriate to allow these not to be disclosed on review from a standard or enhanced certificate.

### **Specified offences**

4.2.1 Specified offences, as defined in paragraph 2.5, will always be disclosed, but are eligible for review (provided they are spent). The Independent Reviewer may decide not to disclose them on a certificate, provided he/she is satisfied that it is reasonable to believe that this would not pose a risk of harm to the public, or that, in relation to enhanced disclosure certificates, their non-disclosure would not undermine the safeguarding or protection of children and vulnerable adults.

### **Custodial sentences and other disposals**

4.2.2 The principles in paragraph 4.2 mean that convictions involving custodial sentences of up to 30 months are eligible for review after the statutory period in Article 6(1) (b) of the 1978 Order has elapsed. Some disposals, such as cautions, diversionary youth conferences, and informed warnings, lie outside the rehabilitation of offenders' regime; these are not disclosed on basic certificates. Such non-conviction disposals are, therefore, eligible for review as soon as a certificate is issued, even if they are for specified offences.

### **Cases involving more than one conviction**

4.2.3 Under the filtering scheme, where an individual has more than one conviction, all convictions appear on the certificate – i.e. filtering does not apply. Such cases are, however, eligible for review.

### **Disclosure in relation to young people**

4.2.4 The Department recognises the need for special consideration in relation to the disclosure of information about young people. Section 98 of the Justice Act has



amended the aims of the youth justice system under section 53 of the Justice (Northern Ireland) Act 2002 to require that all persons and bodies exercising functions in relation to the youth justice system must have the best interests of children as a primary consideration. With this in mind, the review mechanism has been designed so that, in those cases where the information disclosed relates only to convictions or disposals awarded when the applicant was aged under 18, and there is no unspent conviction information, there will be an automatic referral to the independent reviewer. This means that the independent reviewer can consider whether or not it is appropriate to decide not to disclose information prior to the certificate being issued.

## **5. The review process**

5.1 Unless the circumstances are as set out in paragraph 4.2.4, individuals are permitted to seek a review of their case by the independent reviewer, following receipt of their standard or enhanced certificate from AccessNI (so long as the information to be disclosed does not relate only to unspent convictions). There will be no charge for a review.

### **Making an application**

5.2 Applications must be made in writing, either by the individual or by someone acting on their behalf, with their consent. Information on how to make an application will be included on the rear of a certificate when it is issued, and advice is available via the AccessNI Customer Helpline Service (on 0300 200 7888), or at [ani@accessni.gov.uk](mailto:ani@accessni.gov.uk). Further information is available on the NIDirect website, and on the Department's website<sup>4</sup>. Step by step summaries of the process involved in both "adult" and "under 18" cases are set out at Annexes F and G.

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<sup>4</sup> <https://www.dojni.gov.uk/articles/criminal-records-filtering-review-scheme>

5.3 On receiving an application from an individual or their representative, AccessNI will refer it to the IR, together with any information supplied by the applicant in connection with the case, and any other information relevant to the application. Schedule 8A of the 1997 Act, as amended, requires the Chief Constable, the Department (including the Youth Justice Agency) and the Probation Board of Northern Ireland to provide to the IR such information as the IR reasonably requires in connection with the exercise of his or her functions under the Schedule.

5.4 In those cases eligible for automatic referral (i.e. those relating to young people – see paragraph 4.2.4), AccessNI will provide available relevant information. If, following review, the IR decides to disclose information, AccessNI will ask the applicant if they wish to make representations for consideration by the IR, before they proceed with issuing a certificate. Representations must be made in writing, but may be made by a third party on behalf of the applicant, with the applicant's consent. If such representations are received, this will enable the IR to reconsider the case, before coming to a final decision in relation to the disclosure of information.

## **Timeliness**

5.5 The IR should ensure that he or she undertakes a review as quickly as is reasonably possible on receipt of an application. AccessNI will facilitate the process to help ensure a timely resolution. In order to ensure that any delay is kept to a minimum, time limits have been set in relation to the review process. These may be summarised, as follows:

- An individual seeking a review must apply to AccessNI within 90 calendar days of the certificate being issued.
- The IR will review the case and, where practicable, inform AccessNI of his/her determination within 28 calendar days of receiving the application from AccessNI.

- In those cases subject to automatic referral, where the IR decides to disclose information, AccessNI will respond to the applicant within 7 calendar days of being informed by the IR, and will seek representations within 14 calendar days.

## **Factors to be considered by the independent reviewer**

5.6 In carrying out the review, the IR will consider all of the information made available to him/her and, taking account of international human rights standards including, where relevant, children's rights standards, he/she will decide whether or not disclosure of the information, in all the circumstances of the individual case, is proportionate. Before deciding not to disclose information he/she must be satisfied that its non-disclosure would not undermine the safeguarding or protection of children and vulnerable adults, or pose a risk of harm to the public.

5.7 In coming to a decision on whether or not information should be included on a certificate, the Independent Reviewer will consider issues such as:

- the nature of the position being applied for;
- the seriousness of the offence(s);
- how long ago the offence(s) occurred;
- how many offences are being disclosed and, if more than one, whether or not they arose out of a single court hearing;
- if applicable, when the information would fall to be considered for filtering; and
- the age of the applicant at the time of the offence(s), including, in those cases where the applicant was under the age of 18 years, the need to have the best interests of children as a primary consideration.

## **Police information**

5.8 If the independent reviewer concludes that information should not be disclosed on an enhanced certificate, he/she must inform the police so that they can assess whether or not they would wish to include in the certificate, the information

he/she has decided not to disclose, using the powers available to them under Section 113B(4) of the 1997 Act.

5.9 The 1997 Act, as amended, requires that, when adding information, the chief officer must reasonably believe it to be relevant for the purpose for which the certificate is sought, and that it ought to be included in the certificate. Where the IR has concluded that information should not be disclosed on an enhanced criminal record certificate, the police should take that into account, and should not normally consider including that information, unless there is a very specific purpose for doing so. Where police do disclose this information, the chief officer must ensure that there is a clear and specific explanation as to why this information is being disclosed.

5.10 A statutory code of practice<sup>5</sup> has been introduced for police to use when disclosing police information within the criminal records process. This guidance was published on 2 November 2015 under section 113B(4A) of the 1997 Act in order to assist chief officers when providing information from local police records for inclusion in enhanced criminal record certificates. Police must also have regard to the Quality Assurance Framework (QAF) which is a set of processes and more detailed guidance covering the disclosure of local police information under the Act. The QAF is available on line.<sup>6</sup>

5.11 As explained in paragraph 3.4 above, the 1997 Act has now been amended (see section 117A) to allow individuals in Northern Ireland to seek a review of police information by the IM. Further information on police information and the review process is available on nidirect<sup>7</sup>.

## **Issuing a new certificate**

5.12 Once the review process is complete, the IR must inform AccessNI of his/her decision, and they will inform the applicant that either the original certificate remains

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<sup>5</sup> <https://www.dojni.gov.uk/publications/statutory-disclosure-guidance-chief-officers>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/353036/QAF\\_v9\\_OV1\\_O  
verview\\_of\\_QAF\\_Process\\_September\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/353036/QAF_v9_OV1_Overview_of_QAF_Process_September_2014.pdf)

<sup>7</sup> [www.nidirect.gov.uk/accessni](http://www.nidirect.gov.uk/accessni)

unchanged or, where the IR has concluded that information should not be disclosed, issue a new certificate without that information. If more than 14 days have passed since the initial search, Access NI will re-check the criminal record before re-issuing the certificate. If there is new information found the case will be re-referred to the IR to re-commence the process. There will be no charge for re-issuing the certificate.

5.13 In those cases that have been automatically referred to the IR, prior to a certificate being issued by AccessNI, the process will be as set out at paragraph 5.4 of this guidance. AccessNI will issue a certificate to the applicant only after the information has been reviewed by the IR, including, where appropriate, consideration of any representations received from the applicant.

### **Further consideration**

5.14 At the end of the independent review process, on receipt of his/her certificate an individual may still be of the view that information on the certificate should not be disclosed. There will, however, be no further consideration of the case, save in the most exceptional circumstances - for example, the availability of significant new information. It is, of course, open to an applicant to seek a Judicial Review of his/her case if they wish to do so.

5.15 Any subsequent application for a criminal record certificate will be treated afresh, and any information eligible for disclosure will be subject to a new review process. However, on a case by case basis, AccessNI will be able to inform the Independent Reviewer whether or not he/she has previously decided not to disclose information from an individual's certificate.

## 6. Availability of the guidance

6.1 If you would like further copies of this guidance, or if you have any queries about its content, please contact:

POCD Divisional Support Unit  
Department of Justice  
Room 4.17  
Block B  
Castle Buildings  
Stormont Estate  
Belfast, BT4 3SG

E-mail: [POCD.DivisionalSupportUnit@dojni.x.gsi.gov.uk](mailto:POCD.DivisionalSupportUnit@dojni.x.gsi.gov.uk)

This document is also available on the Department's website via the following link:

<https://www.dojni.gov.uk/articles/criminal-records-filtering-review-scheme>

This link also takes you to:

- **A Short Guide to the Criminal Records Filtering Review Scheme** (aimed specifically at applicants); and
- **A Short Guide to Northern Ireland's Criminal Records Disclosure Regime.**

**SCHEDULE 8A OF THE POLICE ACT 1997** (as inserted by Schedule 4 of the Justice Act (Northern Ireland) 2015)

**“SCHEDULE 8A**

**REVIEW OF CRIMINAL RECORD CERTIFICATES**

*Interpretation*

1. In this Schedule—

“conviction” and “spent conviction” have the same meanings as in the Rehabilitation of Offenders (Northern Ireland) Order 1978;

“the independent reviewer” means the person appointed under paragraph 2;

“other disposal”, in relation to a criminal record certificate or enhanced criminal record certificate issued to any person, means any caution, diversionary youth conference or informed warning relating to that person of which details are given in the certificate.

*The independent reviewer*

2.—(1) There is to be an independent reviewer for the purposes of this Schedule.

(2) The independent reviewer is a person appointed by the Department—

(a) for such period, not exceeding 3 years, as the Department decides; and

(b) on such terms as the Department decides.

(3) A person may be appointed for a further period or periods.

(4) The Department may terminate the appointment of the independent reviewer before the end of the period mentioned in sub-paragraph (2)(a) by giving the independent reviewer notice of the determination not less than 3 months before it is to take effect.

(5) The Department may—

(a) pay such remuneration or allowances to the independent reviewer as it may determine;

(b) make arrangements for the provision of administrative or other assistance to the independent reviewer.

(6) The independent reviewer must, in relation to each financial year and no later than 3 months after the end of that year, make a report to the Department about the exercise of his or her functions under this Schedule in that year.

(7) The independent reviewer may make recommendations to the Department as to—

(a) any guidance issued by the Department under paragraph 3 or which the independent reviewer thinks it would be appropriate for the Department to issue under that paragraph;

(b) any changes to any statutory provision which the independent reviewer thinks may be appropriate.

(8) A person may at the same time hold office as the independent reviewer and as the independent monitor under section 119B.

#### *Guidance*

3. The Department may from time to time publish guidance to the independent reviewer as to the exercise of functions under this Schedule; and in exercising functions under this Schedule the independent reviewer must have regard to any guidance for the time being published under this paragraph.

#### *Application for review after issue of certificate*

4.—(1) A person who receives a criminal record certificate or an enhanced criminal record certificate may apply in writing to the Department for a review of the inclusion in that certificate of—

(a) the details of any spent conviction; or

(b) the details of any other disposal.

(2) An application under this paragraph must—

(a) be accompanied by such fee (if any) as may be prescribed; and

(b) be made within such period after the issue of the certificate as the Department may specify in a notice accompanying the certificate.

(3) The Department must refer any application under this paragraph to

the independent reviewer together with—

(a) any information supplied by the applicant in connection with the application; and

(b) any other information which appears to the Department to be relevant to the application.



*Review by independent reviewer after issue of certificate*

5.—(1) The independent reviewer, on receiving an application under paragraph 4 in relation to a certificate, must review the inclusion in that certificate of—

- (a) the details of any spent conviction; and
- (b) the details of any other disposal.

(2) If, following that review, the independent reviewer determines that the details of any spent conviction or other disposal included in the certificate should be removed—

- (a) the independent reviewer must inform the Department of that fact; and
- (b) on being so informed the Department must issue a new certificate.

(3) In issuing such a certificate the Department must give effect to the determination of the independent reviewer and must (in the case of an enhanced certificate) again comply with section 113B(4).

(4) If, following that review, the independent reviewer determines that the details of any spent convictions or other disposals included in the certificate should not be removed—

- (a) the independent reviewer must inform the Department of that fact; and
- (b) the Department must inform the applicant that the application is refused.

(5) The independent reviewer must not determine that details of a spent conviction or other disposal should be removed from a certificate unless the independent reviewer is satisfied that the removal of those details would not undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public.

*Automatic review before issue of certificate containing only details of spent convictions or other disposals of person under 18*

6.—(1) This paragraph applies where—

- (a) the Department proposes to issue (otherwise than under subparagraph (4)(b) or (6)(b)) a criminal record certificate or an enhanced criminal record certificate relating to any person; and
- (b) the certificate would—
  - (i) contain details of any spent conviction or other disposal which occurred at a time when the person was under the age of 18; but
  - (ii) not contain details of any conviction (whether spent or not) or

other disposal occurring after that time.

(2) The Department must, before issuing the certificate, refer the certificate for review to the independent reviewer together with any information which appears to the Department to be relevant to that review.

(3) The independent reviewer, on receiving a referral under subparagraph (2) in relation to a certificate, must review the inclusion in that certificate of—

(a) the details of any spent conviction; and

(b) the details of any other disposal.

(4) If, following that review, the independent reviewer determines that the details of any spent conviction or other disposal included in the certificate should be removed—

(a) the independent reviewer must inform the Department of that fact; and

(b) on being so informed the Department must amend the certificate and issue the amended certificate.

(5) In issuing such a certificate the Department must give effect to the determination of the independent reviewer and must (in the case of an enhanced certificate) again comply with section 113B(4).

(6) If, following that review, the independent reviewer determines that the details of any spent convictions or other disposals included in the certificate should not be removed—

(a) the independent reviewer must inform the Department of that fact; and

(b) the Department must issue the certificate in the form referred to the independent reviewer.

(7) The independent reviewer must not determine that details of a spent conviction or other disposal should be removed from a certificate unless the independent reviewer is satisfied that the removal of those details would not undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public.

(8) The fact that a review has been carried out under this paragraph before a certificate is issued does not prevent the operation of paragraphs 4 and 5 in relation to the certificate once issued.

#### *Disclosure of information to the independent reviewer*

7. The Chief Constable, the Department and the Probation Board for Northern Ireland must provide to the independent reviewer such information as the independent reviewer reasonably requires in connection with the exercise of his or her functions under this Schedule.”.

## ACCESSNI

AccessNI is Northern Ireland's criminal history disclosure service, and operates under Part 5 of the Police Act 1997. Its services can be used by individuals or organisations in situations where an employer requires a job applicant to supply criminal history information. It receives around 125,000 applications for checks each year, about 80% of which are for enhanced checks.

AccessNI provides **three types of checks**:

- a **basic** check - provides information on unspent convictions only. Individuals can apply directly for basic checks to AccessNI or through an employer known as a Responsible Body. These are normally required for Civil Service posts and posts with other public bodies, or contracts with Government.
- a **standard** check - provides information on both spent and unspent convictions and cautions and other eligible non-court disposals such as an informed warning or a diversionary youth conference. Where a standard check is made, the position must be exempt from the provisions of the Rehabilitation of Offenders Order (NI) 1978. A standard check would be required, for example, when applying for a licence with the Security Industry Authority.
- an **enhanced check** - like a standard check, provides details of spent and unspent convictions, cautions and so on, but it may also contain relevant police information, such as an impending prosecution. In addition, many enhanced checks also include a check of the lists of those people in the UK who are not permitted to work with children or adults. Enhanced checks are required for those working in what is known as "regulated" activity; working very closely with children or adults in vulnerable situations.

### What does a check involve?

On receipt of an application for disclosure, AccessNI checks a number of data sources for information. These include the Police National Computer (PNC) which contains details of individual criminal records from across the United Kingdom. This database is used for all types of checks.

Where the application is for an **enhanced check**, AccessNI also searches a police intelligence database to determine whether the applicant's details are recorded on this. Where an individual is matched to a criminal record or their details are found on the police intelligence database, their application is referred to a relevant police force to determine whether the information held by that force should be disclosed on the check. Where the application is for work to be carried out at an applicant's home address, as, for example, in the case of child-minding, this too is referred to a police force.

In addition, where a request is made to AccessNI for a "barred list" check, AccessNI will search the lists of those who are not permitted to work with children or adults. These lists are held by the Disclosure and Barring Service and the Scottish Government.

Having acquired all of the relevant information, AccessNI then print and issue a certificate to the applicant.

## **Help and advice**

Further information about AccessNI can be found at:

[www.nidirect.gov.uk/accessni](http://www.nidirect.gov.uk/accessni)

There is also a **Customer Helpline Service**, available from 9am until 5pm.

This is available on:

**0300 200 7888**

and at:

[ani@accessni.gov.uk](mailto:ani@accessni.gov.uk)

**Further information on Northern Ireland's criminal records disclosure regime is available on the DOJ website at:**

<https://www.dojni.gov.uk/articles/criminal-records-filtering-review-scheme>

## THE FILTERING SCHEME

The filtering scheme was introduced on 14 April 2014, and provides for certain convictions and other disposals to be filtered from standard or enhanced criminal record certificates after a set period of time.

As a safeguard, the **legislation specifies certain offences which are never filtered**. These relate largely to the safeguarding and protection of children and vulnerable adults.

### Otherwise:

<b>If there is one conviction <u>only</u>:</b>	it is only disclosed if it is on a <b>specified list</b> , involved a <b>custodial sentence</b> or is <b>current</b> .
<b>If there is more than one conviction:</b>	<u>all</u> convictions are disclosed.

### Timescales applied

<b>Convictions</b> are filtered for <b>adults</b> :	after <b>11</b> years
For those aged <b>under 18</b> :	after <b>five and a half</b> years.
<b>Cautions</b> are filtered for <b>adults</b> :	after <b>6</b> years
For those aged <b>under 18</b> :	after <b>2</b> years.
<b>Diversionary youth conferences</b> are filtered after <b>two</b> years.	
<b>Informed warnings</b> (adults and under 18) are filtered after <b>one</b> year.	

Note: A caution, restorative caution, diversionary youth conference or informed warning is **always disclosed if it is for a specified offence**.

The following table sets out the impact that then filtering scheme has had on certificates issued between its launch, on 14 April 2014, and 31 March 2015. A total of 105,999 standard and enhanced certificates were printed during this period.

<b>Type</b>	<b>Certs with information reviewed</b>	<b>Certs information filtered</b>	<b>Certs convictions filtered</b>	<b>Certs cautions filtered</b>	<b>Certs both filtered</b>
<b>Standard</b>	983	193	65	122	6
<b>Enhanced</b>	12691	2994	1462	1495	37

**SECTION 117A OF THE POLICE ACT 1997** (as amended by the Justice Act  
(Northern Ireland) 2015)

**(Provision for review of police information by Independent Monitor)**

**“Other disputes about section 113B(4) information**

117A.—(1) Subsection (2) applies if a person believes that information provided in accordance with section 113B(4) and included in a certificate under section 113B or 116—

(a) is not relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), or

(b) ought not to be included in the certificate.

(2) The person may apply in writing to the independent monitor appointed under section 119B for a decision as to whether the information is information which falls within subsection (1)(a) or (b).

(3) The independent monitor, on receiving such an application, must ask such chief officer of a police force as the independent monitor considers appropriate to review whether the information concerned is information which—

(a) the chief officer reasonably believes to be relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), and

(b) in the chief officer's opinion, ought to be included in the certificate.

(4) In exercising functions under subsection (3), the chief officer concerned must have regard to any guidance for the time being published under section 113B(4A).

(5) If, following a review under subsection (3), the independent monitor considers that any of the information concerned is information which falls within subsection (1)(a) or (b)—

(a) the independent monitor must inform the Department of that fact, and

(b) on being so informed, the Department must issue a new certificate.

(6) In issuing such a certificate, the Department must proceed as if the information which falls within subsection (1)(a) or (b) had not been provided under section 113B(4).

(7) In deciding for the purposes of this section whether information is information which falls within subsection (1)(a) or (b), the independent monitor must have regard to any guidance for the time being published under section 113B(4A).

(8) Subsections (10) and (11) of section 113B apply for the purposes of this section as they apply for the purposes of that section.”

## Rehabilitation of Offenders (NI) Order 1978 – Rehabilitation periods

Annex E

<b>Sentence/disposal</b>	<b>Rehabilitation Period</b> <b>(i.e. period of time which must pass before the conviction/disposal becomes spent)</b>
A term of imprisonment exceeding 30 months	Never spent
A term of imprisonment exceeding six months but not exceeding 30 months	Ten years (five years if person is under 18 at the time of conviction)
A term of imprisonment not exceeding 6 months	Seven years (three and a half years if person is under 18 at the time of conviction)
A fine or community service order	Five years (two and a half years if person is under 18 at the time of conviction)
Period of probation	One year
Detention in a place directed by Minister of Justice/SofS under Article 45 of CJ (Children) (NI) Order 1998	6 months or less – 3 years Over 6 months but less than 30 months – 5 years
Attendance Centre Orders, remand home orders, training school orders, juvenile justice centre orders	1 year after order expires
Care and supervision orders under Children and Young Persons Act (NI) 1998	Date the order ceases or 1 year, whichever is longer



<b>Sentence/disposal</b>	<b>Rehabilitation Period</b> <b>(i.e. period of time which must pass before the conviction/disposal becomes spent)</b>
Hospital orders under Mental Health Act (NI) 1961 or Mental Health (NI) Order 1986	5 years from date of conviction or 2 years after the order expires (whichever is longer)
Disqualification and other orders imposing disability, prohibition or other penalty	Date the order ceases
Absolute discharge	6 months
Any other sentence for which the Order does not specify a specific period	5 years (2.5 if under 18 at time of conviction)
More than one conviction	Dependent on sentence which is imposed but where there is another conviction during a rehabilitation period which has not expired, that period will under certain circumstances, be extended to the longer or longest period.
Cautions including restorative and conditional cautions	Not covered by ROO. Regarded as spent immediately for purposes of disclosure certificates.
Diversionary youth conference (DYC)	Not covered by ROO. Regarded as spent immediately for purposes of disclosure certificates.
Informed warnings	Not covered by ROO. Regarded as spent immediately for purposes of disclosure certificates.

**Filtering review process for cases where disclosure includes adult conviction information and/or adult non-conviction information**

1. Individual applies for a standard or enhanced disclosure certificate.
2. AccessNI (ANI) check reveals information that includes adult convictions and/or adult non-conviction disposals.
3. ANI applies filtering process; some or all of the information does not meet the filtering criteria.
4. ANI refers the case to PSNI so that they can indicate (taking account of the individual's reason for seeking the disclosure certificate) what information they reasonably believe to be relevant and ought to be disclosed under section 113B(4) of the Police Act, if any. This may be:
  - a. a conviction or non-court disposal filtered by AccessNI; and/or
  - b. additional information – e.g. about an incident which did not go to court, or about an ongoing police investigation.
5. ANI issues a certificate disclosing all of the unfiltered information, and (if any) the information added by police at step 4.
6. Where a certificate discloses information, AccessNI advises the applicant about the review process and how an application can be made.
7. The applicant decides to seek a review, and does so within the specified timeframe.
8. ANI checks to ensure that the disclosure certificate in question does not relate only to unspent convictions (if it does, ANI advises the applicant that their case is ineligible for review, and that their original certificate stands).
9. If the case is eligible, ANI writes, as necessary, to police/Probation Board Northern Ireland (PBNI)/Youth Justice Agency (YJA) to verify the applicant's information and to request any available additional relevant information they may hold. ANI also contacts the applicant if they believe that further information is required from them.
10. Once they have received all the available relevant information, ANI refers the application for review to the Independent Reviewer (IR), who examines the case, and considers whether or not he/she believes disclosure is proportionate.

## **Independent Reviewer's decision**

The Independent Reviewer may:

### **i. decide to disclose all of the information**

In this case, ANI advises the applicant that the original certificate stands, and that there is no avenue for further review.

### **ii. decide not to disclose any of the information**

In this case, ANI will inform the police of his/her decision, and the rationale for making it. Police will be asked to consider again if there is information they wish to add which is relevant and ought to be disclosed under section 113B(4) of the Police Act.

- If the police do not wish to add information, ANI will issue an amended certificate with no information.
- If the police do wish to add information, ANI will issue an amended certificate disclosing the information considered relevant and necessary by police. (They will also advise the applicant that they can, if they wish, seek to have this information reviewed by the Independent Monitor).

### **iii. decide to disclose some of the information**

In this case, ANI will inform the police of his/her decision, and the rationale for making it. Police will be asked to consider again if there is information they wish to add which is relevant and ought to be disclosed under section 113B(4) of the Police Act.

- If the police do not wish to add information, ANI will issue an amended certificate disclosing the information deemed proportionate by the Independent Reviewer, and inform the applicant that there is no avenue for further review.
- If the police do wish to add information, ANI will issue an amended certificate disclosing both the information deemed proportionate by the Independent Reviewer and any additional information considered relevant and necessary by police. (They will also advise the applicant that they can, if they wish, seek to have the information added by the police reviewed by the Independent Monitor).

**Filtering review process for cases where disclosures relate only to convictions and/or non-conviction disposal(s) awarded when the applicant was under 18**

1. Individual applies for an enhanced certificate.
2. AccessNI (ANI) check reveals information relating to convictions and/or non-conviction disposals, awarded only when the applicant was aged under 18.
3. ANI applies filtering process; some or all of the information does not meet the filtering criteria.
4. ANI checks to see if any of the information relates to unspent convictions. If so, the process continues as from stage 4 of the adult process.
5. If the information does not include unspent convictions, ANI does not issue a certificate, but, where necessary and appropriate, writes to YJA, PSNI, PBNI etc., to request any relevant information they may hold.
6. In the case of PSNI, ANI will check with them to ascertain if (taking account of the individual's reason for seeking the disclosure certificate) there is information they reasonably believe to be relevant and ought to be disclosed under section 113B(4) of the Police Act, if any. This may be:
  - a. a conviction or non-court disposal filtered by AccessNI; and/or
  - b. additional information – e.g. about an incident which did not go to court, or about an ongoing police investigation.
7. Once they have received all the available relevant information, ANI refers the application for review to the Independent Reviewer (IR), who examines the case, and considers whether or not he/she believes disclosure is proportionate.

## **Independent Reviewer's decision**

The Independent Reviewer may:

### **i. decide not to disclose any of the information**

In this case, ANI will inform the police of his/her decision, and the rationale for making it. Police will be asked to consider again if there is information they wish to add which is relevant and ought to be disclosed.

- If the police do not wish to add information, ANI will issue a certificate with no information.
- If the police do wish to add information, ANI will issue a certificate disclosing the information considered relevant and necessary by police. (They will also advise the applicant that they can, if they wish, seek to have this information reviewed by the Independent Monitor).

### **ii. decide to disclose all or some of the information**

In this case, before ANI proceeds with issuing a certificate, they will ask the applicant if they wish to make representations for consideration by the IR. They will also write, if necessary, to YJA/PSNI/PBNI to request an update on any information already provided.

- On receipt of the representations and any further information, the Independent Reviewer (IR), will reconsider the case, and come to a final decision on whether or not he/she believes disclosure is proportionate.

Following this **further consideration**, the Independent Reviewer will either:

#### **- decide not to disclose any information**

In this case:

- If the police do not wish to add information, ANI will issue a certificate with no information.
- However, if the police do wish to add information, ANI will issue a certificate disclosing the information considered relevant and necessary by police. (They will also advise the applicant that they can, if they wish, seek to have this information reviewed by the Independent Monitor).

**OR**

- **remain of the view that some or all of the information should be disclosed**

In this case, ANI will inform the police of his/her decision, and the rationale for making it. Police will be asked to consider again if there is information they wish to add which is relevant and ought to be disclosed.

- If the police do not wish to add information, ANI will issue a certificate disclosing the information deemed proportionate by the Independent Reviewer, and inform the applicant that there is no avenue for further review.
- If the police do wish to add information, ANI will issue an amended certificate disclosing both the information deemed proportionate by the Independent Reviewer and any additional information considered relevant and necessary by police. (They will also advise the applicant that they can, if they wish, seek to have the information added by the police reviewed by the Independent Monitor).

## GLOSSARY/INTERPRETATION

<b>Term</b>	<b>Meaning</b>
DOJ/ the Department	The Department of Justice
AccessNI	Northern Ireland's criminal history disclosure service.
The 1997 Act	The Police Act 1997.
The Justice Act	The Justice Act (Northern Ireland) 2015.
Rehabilitation of Offenders (NI) Order 1978 (ROO)	The legislation which limits the time for which declaration of an offence has to be made.
Criminal record	This is not defined in legislation, but is generally accepted to be a record of convictions and specific non-court disposals held in regard to any individual.
Conviction	Result of prosecution for an offence in court for which a person is found guilty.
Spent conviction	A conviction that does not have to be disclosed because the requisite period of time under the ROO has passed (unless it is exempted under the Rehabilitation of Offenders Exceptions Order (Northern Ireland) 1979).
Other disposal/non-conviction disposal	A caution, diversionary youth conference or informed warning.
Specified offence	Serious crimes (specified under section 113A(6D) of the 1997 Act) that will always appear on an AccessNI check.
Filtering scheme	Allows for the exclusion of certain convictions, and of other non-conviction disposals, from disclosure on standard and enhanced criminal record certificates.
Review mechanism	Enables an individual, in certain circumstances, to seek a review of their case where a conviction or disposal has not been filtered from his or her standard or enhanced criminal record certificate.

Independent reviewer	The independent person, appointed by the Department of Justice, under the provisions of section 117B and Schedule 8A of the Police Act 1997 (the 1997 Act), to consider any request for a review of his or her certificate after filtering.
Independent Monitor	Appointed under the 1997 Act to review a sample of the enhanced criminal record certificates issued by the Disclosure and Barring Service and AccessNI; and the person to whom an individual may apply to determine whether any information provided by the police under section 113B(4) of the 1997 Act is relevant and/or ought to be included in an enhanced criminal record certificate.
Police information	Information added to an enhanced certificate by the police using the powers available to them under Section 113B(4) of the 1997 Act. When adding information, police must reasonably believe it to be relevant for the purpose for which the certificate is sought, and that it ought to be included in the certificate.